

Service Bus Co., Inc. and Roger Finan. Case 2-CA-18838

13 June 1984

SUPPLEMENTAL DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 19 April 1983 the National Labor Relations Board issued an order adopting, in the absence of any exceptions, the Decision and Order of the administrative law judge, directing, inter alia, that Service Bus Co., Inc., the Respondent, make whole employee Roger Finan for his losses resulting from the Respondent's unfair labor practices.¹ On 8 November 1983 the Respondent and counsel for the General Counsel entered into a stipulation wherein the Respondent stipulated that it had "no objection to any portion of the Board's Order." A controversy arose about the amount of backpay due under the Order and on 9 November 1983 the Regional Director for Region 2 issued a backpay specification and notice of hearing, alleging the amount of backpay due employee Roger Finan. The Respondent and its counsel were both duly served with copies of the specification and on 25 January 1984 the Respondent entered into a signed settlement stipulation with counsel for the General Counsel which was approved by Administrative Law Judge Edwin H. Bennett. Pursuant to the stipulation, the Respondent agreed to pay \$2980 in backpay plus \$641.98 in interest to discriminatee Roger Finan in five installments beginning 15 February 1984 and ending 15 June 1984. The Respondent further agreed to "waive any rights to contest the amounts due . . . and any and all further proceedings before the . . . Board and any court." The Respondent also agreed that the "failure to pay any installment when due shall make the entire amount still unpaid immediately due and payable at the option of the Regional Director." The Respondent has failed to make any payments pursuant to the stipulation. By certified letter dated 7 March 1984 the Region notified the Respondent and its counsel that the "entire amount, including interest is now considered . . . due." Neither the Respondent nor its counsel has responded to this letter.

On 26 March 1984 the General Counsel filed directly with the Board a Motion for Summary Judgment. On 2 April 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent has not filed a re-

sponse. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.54(c) of the Board's Rules and Regulations provides:

(a) . . . the respondent shall, within 15 days from the service of the specification, if any, file an answer thereto

. . . .

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. . . .

The Respondent did not file an answer controverting any allegation of the backpay specification. On 25 January 1984 the Respondent executed a stipulation in which it agreed to "waive any rights to contest the amounts due . . . and any and all further proceedings before the . . . Board." The Respondent also agreed to pay the amount specified in the specification plus interest to discriminatee Roger Finan in installments commencing 15 February 1984. The Respondent further agreed that the failure to pay any installment when due would make the entire unpaid amount due immediately. The Respondent has failed to make any payment as required by the stipulation, has failed to offer any explanation for its failure to pay, and has failed to respond to the Notice To Show Cause.

Because the Respondent has failed to file an answer to the specification, entered into a settlement stipulation specifically waiving any rights to contest the amount due, and has failed to offer any explanation for its failure to comply with the terms of the settlement stipulation, the Board deems the Respondent to have admitted as true all allegations of the specification and stipulation. Thus, there are no matters in issue requiring a hearing. Accordingly, we grant the General Counsel's Motion for Summary Judgment.²

² In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to contest either the factual allegations or the legal conclusions of the General Counsel. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

¹ The Board's Order is unpublished.

ORDER

The National Labor Relations Board hereby orders that the Respondent, Service Bus Co., Inc., Yonkers, New York, its officers, agents, successors, and assigns, shall make whole employee Roger Finan by paying to him the amount of \$3621.98

(\$2980 plus \$641.98 in interest) as computed in the specification and the 25 January 1984 stipulation plus interest as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977), on such amount accruing from 15 June 1984 to the date of payment, minus tax and social security withholdings required by Federal, state, and city laws.